BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

CLEAN WATER ALLIANCE, et. al.,	)	
	)	No. 02-2-0002
Petitioners,	)	
	)	ORDER DENYING
v.	)	MOTION FOR
	)	RECONSIDERATION
	)	
WHATCOM COUNTY,	)	
	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
SUDDEN VALLEY COMMUNITY ASSOCIATION	)	
	)	
Intervenors,	)	
	)	

On August 19, 2002, we received a motion for reconsideration and clarification from Petitioners Clean Water Alliance, Sherilyn Wells and Tim Paxton. We treat their motion for clarification as part of their motion to reconsider. Under RCW 36.70A.302(6) only jurisdictions subject to findings of invalidity may move to clarify.

SEPA Comment Period

In their motion, petitioners claimed that the Board made a misinterpretation of fact by stating that a public comment period for the County's State Environmental Policy Act (SEPA) action was provided. They claimed the comment period was misidentified and illegally abbreviated. They referred to their day-of-hearing dispositive motion regarding this question of an abbreviated public comment period. This question was not raised in their petition for review (February 13, 2002), in their amended petition for

review (March 29, 2002), nor in their second amended petition for review (April 22, 2002), even though they raised nine separate SEPA issues.

At the hearing, we noted that the dispositive motion regarding this SEPA procedural violation was untimely as it was submitted long after the March deadline for motions. As the other parties and the Board had not been afforded the opportunity to review the motion, we took the motion under advisement and informed the parties we would rule subsequent to our review. We did so in the final decision and order. We denied the dispositive motion as untimely.

Even had we accepted the dispositive motion, the petitioners' contention that the comment period was illegally abbreviated is incorrect. Petitioners have confused the requirements of the comment period, which extends for the fourteen days after issuance of the proposal, with the requirements of the appeal period, which extends for the ten days after final action at the end of the comment period. They have jumbled the concepts of date of public notice (required to precede the appeals period) and issuance (the date the proposal was made which is followed by the fourteen day comment period). Contrary to their statement at 3 in their dispositive motion, public notice and issuance are not the same, and do not occur on the same date. Under this record, the actual sequence of events was conducted correctly and legally by the County.

The sequence was as follows:

1. June 11, 2001, mitigated declaration of non-significance (MDNS) was proposed pursuant to WAC 197-11-340(2) and declared open for comment for fourteen days. The proposal could not be acted on until the comment period ended. The date of issuance was clearly indicated as June 11, 2001. It was clearly stated that comments must be received by June 25, 2001, at which time the lead agency, the Whatcom County Land Use Division, would act on the proposal.

No comments were received by petitioners during the comment period. Petitioners' comments were not received until June 27 and June 28, after the comment period ended.

2. The lead agency acted on the MDNS on June 25, 2001 which action began the ten-day appeal period. It had published notice of the appeal period on June 20, 2001 (Ex. #46). In that affidavit of publication, the lead agency clearly stated that any person or agency may appeal the County's compliance by filing an appeal within ten days from the date published at the end of the item in question, in this case: June 25, 2001. The ten-day appeal period extended from the 25th of June until the 5th of July. No appeal was received from petitioners during this period.

   "Issuance" (June 11, 2001) is not the same as "date of publication" (June 20, 2001). Petitioners have misread SEPA requirements regarding public comment and appeal periods.

Official Notice

In their motion to reconsider, petitioners called upon us to reconsider our denial of petitioners' day-of-hearing motion to take official notice. WAC 242-02-660 allows the Board or presiding officer discretion in taking official notice. In the final decision and order we ruled that the documents requested to be officially noticed were not necessary nor of substantial assistance in reaching our decision. We decline to modify that decision. It is difficult to identify the "irreversible harm" claimed by petitioners regarding the MDNS when the current action would only reduce development.

Issues Eliminated in the Prehearing Order

In their motion, petitioners requested us to reconsider the elimination of Issues 3.2 and 3.4 from petitioners' amended petition. Our rules provide for seven days in which parties may request corrections to the prehearing order. WAC 242-02-558(10). No such request was made within that seven-day period which began May 6, 2002. The request is untimely.

We find no grounds in the motion which lead us to modify our final decision and order. We decline to reconsider our decision in our SEPA finding. The motion for reconsideration is denied.

So ORDERED this 30th day of August, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge
Board Member

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Nan A. Henriksen
Board Member